

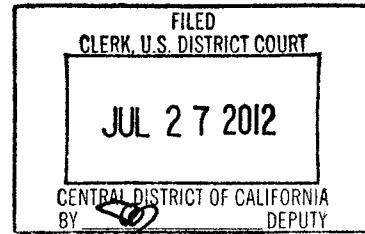
Fee due

Pyung Hwa Ryoo
NAMEF88924
PRISON IDENTIFICATION/BOOKING NO.P.O. Box 8800
ADDRESS OR PLACE OF CONFINEMENT

Corcoran, CA 93212

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

530

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIAPyung Hwa Ryoo
FULL NAME (Include name under which you were convicted)

Petitioner,

v.

C. Gipson, Warden of CSP-Corcoran
NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER

Respondent.

CASE NUMBER:

CV 12-6440 AG (MRW)
To be supplied by the Clerk of the United States District Court☐ AMENDEDPETITION FOR WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY
28 U.S.C. § 2254PLACE/COUNTY OF CONVICTION Los Angeles
PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT
(List by case number)

CV

CV

INSTRUCTIONS - PLEASE READ CAREFULLY

1. To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
2. In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
3. Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
5. You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
5. You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.

When you have completed the form, send the original and two copies to the following address:

CLERK, U.S. DISTRICT COURT

JUL 26 2012

CENTRAL DISTRICT OF CALIFORNIA

Clerk of the United States District Court for the Central District of California
United States Courthouse
ATTN: Intake/Docket Section
312 North Spring Street
Los Angeles, California 90012

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY (28 U.S.C. § 2254)

PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

1. ☒ a conviction and/or sentence.
2. ☐ prison discipline.
3. ☐ a parole problem.
4. ☐ other.

PETITION

1. Venue

- a. Place of detention California State Prison, Corcoran
- b. Place of conviction and sentence Pomona Superior Court, County of Los Angeles

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

- a. Nature of offenses involved (include all counts): (1) Second degree murder; (2) Attempted murder; (3) Shooting at an occupied vehicle; (4) Gun and Gang enhancements.
- b. Penal or other code section or sections: P.C. §§: 187; 664-187; 246; 186.22 subd. (c); 12022.53 subsec. (b)(c)(I)(E).
- c. Case number: Sup. Ct. Case No. #KA077372
- d. Date of conviction: October 18, 2007.
- e. Date of sentence: February 25, 2008
- f. Length of sentence on each count: (1) 15 to life; (2) life with parole; (3) stayed P.C. §654; (4) 50 years to life.
- g. Plea (check one):
 - ☒ Not guilty
 - ☐ Guilty
 - ☐ Nolo contendere
- h. Kind of trial (check one):
 - ☒ Jury
 - ☐ Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? ☒ Yes ☐ No

If so, give the following information for your appeal (and attach a copy of the Court of Appeal decision if available):

- a. Case number: # B205699 (See Exh - A.)
- b. Grounds raised (list each):
 - (1) Court's admission of involuntary statement violated due process

(2) Failure to allow jury to consider informant an accomplice WAS reversible error.

(3) Insufficient evidence to support gang enhancements.

(4) _____

(5) _____

(6) _____

c. Date of decision: August 5, 2009.

d. Result Appeal denied.

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? ☒ Yes ☐ No

If so give the following information (and attach copies of the Petition for Review and the Supreme Court ruling if available):

a. Case number: # S176005 (See Exh-B & Exh-C.)

b. Grounds raised (list each):

(1) Same as above in Court of Appeals.

(2) "

(3) "

(4) _____

(5) _____

(6) _____

c. Date of decision: November 10, 2009

d. Result Review denied.

5. If you did not appeal:

a. State your reasons

N/A

b. Did you seek permission to file a late appeal? ☐ Yes ☐ No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

☒ Yes ☐ No

If so, give the following information for each such petition (use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available):

- a. (1) Name of court: Pomona Superior Court
 (2) Case number: #KA077372
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): January 25, 2011.
 (4) Grounds raised (list each):
 (a) (See Attachment "A")
 (b) _____
 (c) _____
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: February 7, 2011.
 (6) Result Denied. (See Exh-D.)
 (7) Was an evidentiary hearing held? ☐ Yes ☒ No

- b. (1) Name of court: Court of Appeal, Second Appellate District, Division 4
 (2) Case number: #B234416
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): July 10, 2011.
 (4) Grounds raised (list each):
 (a) (See Attachment "A")
 (b) _____
 (c) _____
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: August 18, 2011.
 (6) Result Denied. (See Exh-E.)
 (7) Was an evidentiary hearing held? ☐ Yes ☒ No

- c. (1) Name of court: California Supreme Court (See Exh-F.)
 (2) Case number: #S199253
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): January 4, 2012
 (4) Grounds raised (list each):
 (a) (See Attachment "A")
 (b) _____

ATTACHMENT "A"

Grounds Raised
(#6a.(4) form CV-69)

a). Prosecutor elicited false testimony from prosecution witness and violated Petitioner's right to due process and a fair trial.

b). Prosecutor's use of altered and/or edited tape recording of witness statement violated Petitioner's right to due process.

c). Prosecutor withheld witness statements and police notes from petitioner's attorney and violated Petitioner's right to due process.

d). Court's denial of Petitioner's motion for severance was error.

e). Court's denial of Petitioner's Pitchess motion was error.

f). Petitioner was denied due process when detective showed victims single photograph of Petitioner an hour before trial.

g). Court's refusal to hold a 402 hearing on Petitioner's motion to exclude the pretrial photographic and pending in-court identifications of the victims violated due process.

h). Petitioner was denied effective assistance of counsel when his trial attorney failed to investigate.

i). Petitioner was denied effective assistance of counsel on appeal when his appellate attorney failed to raise meritorious issues on appeal.

Grounds Raised
(#6b.(4) form CV-69)

(Same grounds as raised in Superior Court above...)

Grounds Raised
(#6C.(4) form CV-69.)

a). Prosecutor's use of altered and/or edited tape recording of witness statement violated due process.

b). Prosecutor elicited false testimony from prosecution witness and violated due process.

c). Court abused its discretion and erred in denying Petitioner's Pitchess motion.

d). Court abused its discretion and erred in refusing to afford Petitioner a hearing on his motion to exclude the pretrial photographic and in-court identification of victim.

e). Petitioner was denied effective assistance of counsel on appeal when his appellate attorney failed to raise meritorious issues on appeal.

- (c) _____
 (d) _____
 (e) _____
 (f) _____

(5) Date of decision: July 11, 2012

(6) Result denied. (See Exh - G.)

(7) Was an evidentiary hearing held? ☐ Yes ☒ No

7. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: (See Attachment "B")

(1) Supporting FACTS: (See Attachment "B")

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☒ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☒ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☒ No

b. Ground two: (See Attachment "B")

(1) Supporting FACTS: (See Attachment "B")

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☒ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☒ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court?

☐ Yes

☒ No

c. Ground three: (See Attachment "B")

(1) Supporting FACTS: (See Attachment "B")

(2) Did you raise this claim on direct appeal to the California Court of Appeal?

☒ Yes

☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court?

☒ Yes

☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court?

☐ Yes

☒ No

d. Ground four: (See Attachment "B")

(1) Supporting FACTS: (See Attachment "B")

(2) Did you raise this claim on direct appeal to the California Court of Appeal?

☒ Yes

☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court?

☐ Yes

☒ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court?

☒ Yes

☐ No

e. Ground five: N/A

(1) Supporting FACTS: N/A

(2) Did you raise this claim on direct appeal to the California Court of Appeal?

☐ Yes

☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court?

☐ Yes

☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court?

☐ Yes

☐ No

ATTACHMENT "B"

GROUND FOR RELIEF (#7 Form CV-69.)

Ground One

Petitioner was denied his Fourteenth Amendment right to due process and a fair trial because the trial court denied his motion to suppress Linora Lay's involuntary pretrial statement.

Supporting Facts

1). Before trial, Petitioner moved to suppress Linora Lay's pretrial statement on the ground that the detectives coerced him into making an involuntary statement. (RT B17; CT 395.) After hearing the motion, the trial court acknowledged that it was a "close call", but denied the motion on the basis that under the totality of the circumstances the coercion was not such that it would affect the reliability of the evidence. (RT B20 - B21.) The trial court's failure to suppress Lay's involuntary statement violated Petitioner's Fourteenth Amendment right to due process and a fair trial.

2). Veteran Homicide Detectives Lowe and Peyton were the lead investigators in this case. They initially got the lead to Lay when they recieved a call from a detective from the Montebello Police Department on November 30, 2006. The detective told them that a suspect he had arrested for an armed robbery claimed to have information regarding the freeway shooting detectives Lowe and Peyton were investigating. (RT 1288.) This suspect,

1 Brian Moon, was attempting to receive a deal in his robbery case in exchange for giving information to the detectives about the shooting. (RT 708.)

2
3
4 3). Detectives Lowe and Peyton interviewed Moon on December 1, 2006. (RT 1288.) At the time, Moon was their main suspect in the shooting investigation due to the fact that the victims identified him as the aggressive gang member who confronted them at the party, which later lead to the shooting. (RT 625, 627, 655, 1287-1288.) Moon gave the detectives a story implicating Justin Chung (Petitioner's co-defendant), Lay, and Petitioner while denying any involvement himself. (Exh-H.) Near the end of this interview, Detective Lowe asked Moon whether he thinks Lay would "roll over" on Silent (Chung) if they go "jam him up". Moon replied, "I think he's more than, yeah." (Exh-H, lines 601-604.) With the information they received from Moon, the "door opener" of their investigation (RT 1287-1288.), the detectives went to "jam up" Lay. (RT 1286.)

17 4). Lay was interrogated by Detectives Lowe and Peyton on December 8, 2006. (RT 961.) At the time, Lay was 16 years old (RT 966.), and had been incarcerated in the California Youth Authority for a couple weeks for an unrelated charge. (RT 966-967, 1209, 1225, 1269.) He was alone with the two detectives in a small room in a custodial facility. (RT 970-971, 1269.) The detectives did not give him Miranda warnings, and secretly tape recorded the interrogation. (Exh-I.)

25 5). The detectives began the interrogation by telling Lay that they came to talk to him about a freeway shooting which occurred on August 17, 2006 after Lay, his friends, and some guys thought to be

1 from Wah Ching attended a party. (Exh - I, pg. 1-) Lay replied that
 2 he did not remember attending the party. In response to further ques-
 3 tions by the detectives, Lay said he didn't affiliate with any gang,
 4 never heard of Giggles or Little Wicked, and didn't know anyone na-
 5 med Loony. (Exh - I, pgs. 1-4.)

6 6). Detective Lowe went on to tell Lay, "So after this party,
 7 these guys took off and they left. Then some guys chased them.
 8 There were some guys in the car. And a shooting happened. And they
 9 drove away. The people in the car." Detective Peyton added that
 10 the shooting occurred on the 60 freeway. (Exh - I, pgs. 4-5.) Lay
 11 said it did not sound familiar. Detective Lowe then asked Lay if
 12 he was a "dumb guy" and "stupid". After Lay replied "no", Lowe
 13 proceeded to tell Lay the following:

14 So this guy Silent, he gets in the car with somebody else.
 15 Silent ended up shooting at these guys. Okay? And there was some-
 16 body else in that car. The other person in the car would be you.
 17 We're not saying that you shot. We're not saying that you were driv-
 18 ing the car. But we can put you in the car. The problem is that
 19 you say you don't know any of these guys, but how come they know
 20 you? And your cell phone? How come we have your cell phone records,
 21 and you called and talked to these guys? The problem is here, Linora,
 22 is that we're not talking about some little case that you're gonna go
 23 off and you're gonna end up doing a couple of years for. We're
 24 talking about the big leagues. Something really big. Somebody
 25 died. You understand? The person that died was a college student.
 26 ... As far as we're concerned, you can be a witness, or you can
 27 be a suspect. It's up to you today to decide what it is you want to
 28 be. If you pulled the trigger, then obviously you can't be a witness.
 See what I'm saying? If you're sitting in the car, and you didn't
 have anything to do with the shooting, I would choose to be a wit-
 ness. I sure wouldn't want to be a suspect in a murder. Another
 guy was hit in that car. Shot his face off, which is attempted mur-
 der. So the shooter in this case has got attempted murder and
 murder on him. Me, personally, if I were you, all of 16 years
 of age, I don't think I'd want to be in prison for the rest of my
 life. But, if you pulled that trigger, you can continue to say what
 you're telling us right now. And we'll just go file a case. You won't
 be sitting here in the comfort of California Youth Authority. You'll be
 sitting up in State Prison. 'Cause that's where these cases go. You un-
 derstand that?

(Exh - I, pgs. 5-6.)

7). Detective Lowe asked Lay if he understood "what we're trying to tell you." Lay said that he did. Detective Lowe then said that they already knew the answers to the questions and they just wanted to hear his responses. (Exh-I, pg. 6.) The interrogation continued as follows:

Lowe: We can put you at the party, and we can put you in the car. You have to make a decision. Like I said, were you the shooter? Were you the driver? Were you a passenger? We know the answers to these questions. But we need to hear the answers from you so we can decide what we need to do from here. Okay? The most important question? Shooter? Driver? Or passenger? Which one are you?

Lay: Passenger.

Lowe: Tell us what we need to do next then, okay?

Lay: Well, what is that?

Lowe: Huh?

Lay: What is that?

Lowe: Well, if you're a passenger, then in my opinion, in my partner's opinion, you're a witness. Okay? If you're the shooter and the driver, you're a suspect. You understand? So tell us what to do next. If you're the passenger. And you're honestly and righteously the passenger, then we'd like you to explain to us what happened, what happened, who you, what you saw, what you did. Okay? You understand? Are you with me so far? Are you with me?

Lay: Yeah.

(Exh-I, pg. 7.)

8). Lay then admitted that he associated with HKB, that they called him Loony, and that he went to the party with some guys from HKB. He stated that he was just drinking at the party and that "they just called me out to the car and they just took off". Detective Lowe pressed Lay to tell them what happened after he got in the car. Lay stated that he "just fell asleep in the car." (Exh-I, pgs. 8-9.) The interrogation continued as follows:

Lowe: You fell asleep in the car? Then what happened?

Lay: I don't know.

Lowe: That's not going to work. That's not going to work. People were in that car. So you need to be straight. You need to be straight. If you want us to treat this the way

you're telling us, right? You're telling us you're the passenger. You weren't the shooter and you weren't the driver. You got to be straight with us. We already know the answers, but we need to hear it from you. Don't sit there and bullshit us. If you want to bullshit us, we'll get up and we'll go file the case against you and your buddies, and you're gonna get wrapped up with them. That's how it's gonna be. I mean, I'm not gonna bullshit you here. If you, if you're gonna start going in that direction, then it's gonna lead us to believe that you're not telling us the truth. From the information that we have right now. Which means you're a suspect. Okay? You need to be straight.

(Exh-I, pgs. 9-10.)

9). Lay immediately asked Detective Lowe, "What happens to witnesses?" Detective Lowe replied, "What happens to witnesses? We're gonna get your statement. And we're gonna leave here. You're not gonna be charged if you're a witness. If you're a suspect, then we're going a different route. If you're a suspect, then we're gonna have to file charges against you." Lowe again gave Lay the Hobson's choice: "Driver, shooter, or passenger? Which one were you?" Lay responded, "passenger." (Exh-I, pg. 10)

10). Detective Lowe asked Lay who was driving the car, and Lay replied, "I don't really know him that well. I just met him." Lowe then showed Lay a single photograph of Petitioner, and he identified Petitioner as the driver. (RT 1275; Exh-I, pg. 11.)

11). Lay then proceeded to tell his story incriminating Petitioner and Chung in the shooting while painting himself as the passenger who did and knew nothing, was merely a witness, just as Detective Lowe suggested to him. (Exh-I.)

12). When the detectives were concluding the interrogation and asking Lay to confirm whether he was sure of the information he gave to them, Lay hesitated as if unsure, and the following exchange took place:

1 Lay: I'm not sure.
 2 Lowe: What do you mean, you're not sure?
 Lay: I think, I think it could have been one of the big
 3 honeys in the car too.
 Lowe: There might have been four guys in the car?
 Lay: Driving, or...
 4 Lowe: The white car or the black car?
 Lay: The white car...
 5 Lowe: Okay. So it wasn't Daniel (Petitioner) driving?
 Lay: I'm not, I'm not sure. I can't remember.

6
 7 (Exh- I, pg. 36.)

8 13). The prosecutor played Lay's tape recorded statement for the
 9 jury after Lay testified that he remembered going to the party but
 10 could not remember going home because he was drunk, and could not
 11 remember the statement he gave to Detective Lowe. (RT 956-957, 960.)

12 14). After the tape recorded statement was played, Lay testified
 13 that he felt threatened and nervous during the interrogation. (RT
 14 1214, 1226-1227; CT 82, 84.) He confirmed that he testified at
 15 the preliminary hearing that he felt threatened with being charged
 16 with something very serious if he didn't make a statement. (RT
 17 1267.) He understood Detective Lowe's suggestion that it was
 18 better to be a witness than a suspect. (RT 1216.) Detective Lowe
 19 suggested to him who the driver was by showing him a single ph-
 20 otograph of Petitioner. (RT 1239, 1247.) He acted in his best
 21 interest by accepting these suggestions and repeating them to the
 22 detectives because he preferred to be a witness rather than a sus-
 23 pect. (RT 1231, 1259.)

24 15). In his closing argument to the jury, even the prosecutor adm-
 25 itted that the detectives had to force the statement out of Lay:

26 "... there were things that the detective did tell him because he
 27 wasn't willingly speaking. It was kind of like pulling teeth.
 The guy wouldn't open up his mouth." (RT 1910.)

1 "So you can just see that slowly he let's it out, but he doesn't just
 2 let it out all at once. The detectives have to basically stick
 3 a crowbar in his mouth and pry it open to get him to admit he
 was in the car and tell them who the driver was and tell them what
 happened in the shooting. (RT 1914.)

4 16). Petitioner was prejudiced by the admission of Lay's involuntary
 5 and coerced statement into his trial because that was the sole evidence
 6 the prosecutor relied upon to connect Petitioner to the shooting. (RT
 7 2123 - 2133.)

8 9 Supporting Cases and Authorities

- 10 1). Pyle v. Kansas (1942) 317 U.S. 213, 214 - 216.
- 11 2). Blackburn v. Alabama (1960) 361 U.S. 199, 206 - 207.
- 12 3). Colombe v. Connecticut (1961) 367 U.S. 568, 601 - 602.
- 13 4). LaFrance v. Bohlinger (1st. Cir. 1974) 499 F.2d 29, 34.
- 14 5). Schnackloth v. Bustamonte (1961) 412 U.S. 218, 226.
- 15 6). Haley v. Ohio (1948) 332 U.S. 596, 599 - 601.
- 16 7). Miranda v. Arizona (1966) 384 U.S. 444-445, 458, 467.
- 17 8). People v. McClary (1977) 20 Cal.3d 229-230.
- 18 9). People v. Lee (2002) 45 Cal. App. 4th 772, 781.
- 19 10). Chapman v. California (1967) 386 U.S. 18, 23.

20 21 22 Ground Two

23 Petitioner was denied his Fourteenth Amendment
 24 right to due process and a fair trial because the
 25 trial court denied his request to instruct the
 26 jury to determine whether Brian Moon was an
 27 accomplice in fact.

Supporting Facts

1
2 1). During trial, Petitioner requested that the trial court instruct
3 the jury on the law pertaining to accomplice testimony with respect to
4 both Linora Lay and Brian Moon. The defense's argument was that,
5 although evidence did not establish that Lay and Moon were acc-
6 ompllices as a matter of law, the evidence was sufficient to send the
7 issue to the jury for a determination as to whether they were accom-
8 plices in fact. (RT 1602, 1604, 1802-1809.) The court granted the
9 request as to Lay but denied it as to Moon on the ground that "his
10 affirmative acts are too attenuated from the charges in this case."
11 (RT 1808-1809.) The trial court erred by denying Petitioner's
12 request as to Moon because there was sufficient evidence to send
13 the issue to the jury. This violated Petitioner's Fourteenth Am-
14 endment right to due process and a fair trial.

15 2). The four surviving victims of the freeway shooting, Calvin
16 Yao, Kelvin You, Rex Wu, and Xu Zhang, all stated that they,
17 along with their friend Eric Huang, attended a party in Rowland
18 Heights on the night of August 17, 2006. (RT 625.) Within minut-
19 es of arriving at the party, they were confronted by two individ-
20 uals described as "Korean gang-member types", who were later
21 identified as Brian Moon and Adam Pak. (RT 626, 629-630, 633,
22 655, 743, 904-905, 920.) A group of gang-member types stood
23 near Moon and Pak. (RT 655, 681, 906.)

24 3). Moon asked the victims where they were from, an inquiry
25 about their gang affiliation. The victims stated that they did
26 not belong to a gang. (RT 627-628, 657, 681-682, 907-908.)
27 Moon aggressively accused them of being Wah Ching gang members
28

1 and asked repeatedly what they were doing at the party. (RT 628 -
2 629, 908.) Moon appeared very intoxicated and was very aggressive.
3 (RT 656-657, 907.) Feeling uncomfortable with the hostility gener-
4 ated by Moon and his friends, the victims decided to leave the par-
5 ty to avoid further trouble, even though they had only been at
6 the party for ten minutes. (RT 633, 657-658, 682, 908.)

7 4). Victim Kelvin You testified that as he and his friends were
8 leaving the party, he saw Moon and his friends follow them out to
9 the front porch and huddle together talking amongst themselves while
10 watching You and his friends get in Calvin Yao's car to leave. (RT
11 909.) Once they got in the car, they drove to the 60 freeway, and
12 upon entering it, a vehicle drove past them from behind shooting
13 bullets into their car. (RT 635-636, 637, 658-659, 683-684, 931.)
14 The shooting occurred five to ten minutes after they left the party.
15 (RT 633, 657-658, 682, 908.)

16 5). On November 30, 2006, Moon was arrested by the Montebello
17 Police Department for an armed robbery. (RT 694.) He told the
18 Montebello detectives that he was willing to give information re-
19 garding the freeway shooting which occurred a few months before
20 his arrest, in exchange for a deal on his robbery case. (RT 694,
21 707.) The detectives promised to see what they can do (RT 700.),
22 and then contacted Detectives Lowe and Peyton who were leading
23 the murder investigation.

24 6). Detectives Lowe and Peyton interviewed Moon on Decem-
25 ber 1, 2006. The detectives began the interview by telling Moon
26 that they already had information that he was involved in the shoot-
27 ing. (Exh-H, pg.1.) Moon denied that he was involved, and went
28

1 on to give them a story implicating Chung, Lay, and Petitioner in
2 the shooting while denying any type of involvement himself. (Exh-H.)

3 7). During this interview, Moon told the detectives, among
4 other things, the following:

5 a). That when the "guys from Wah Ching" came to the party,
6 "we all were talking about what we were going to do." (Exh-H, pg.1)

7 b). That the murder weapon was a Smith & Wesson .357
8 magnum, silver barreled with a wooden grip, that looked like "pretty
9 nice stuff." (Exh-H, pgs. 3, 16, 27-28.)

10 c). That he did not "hit up" the victims at the party, and that
11 he just walked up to them, said "what's up" and shook their hands.
12 (Exh-H, pgs. 13.)

13 d). That he had walked out to a "little area" in front of the
14 house after the victims left the party and saw "Silent and Gummy"
15 run down the corner. (Exh-H, pg. 14.) He asked Adam Pak, "whats
16 going down?", and Pak responded "they're gonna go get them."
17 (Exh-H, pg. 14.)

18 e). That after the shooting, Silent called him and report-
19 ed to him, "we got 'em on the freeway" and kept asking him "what
20 should I do? What should I do?" (Exh-H, pgs. 15-16, 19-20.)
21 Moon later acknowledged that this phonecall did not come as a
22 surprise for him. (RT 731.)

23 f). That he was jumped into HKB when he was 11 years old.
24 (Exh-H, pgs. 22-23.)

25 g). That he was right under Pak in the hierchy of HKB and
26 can tell Chung, Lay, and Petitioner what to do. (Exh-H, pg. 27.)

27 8). The prosecution's gang expert testified at Petitioner's trial
28

1 that Moon stated that he was a shotcaller of HKB. (RT 1332-1333, 1345.)
 2 Both Lay and Detective Lowe corroborated this. (RT 1253, 1295.)
 3 The gang expert further testified that a "shotcaller" is a leader of
 4 the gang and orders younger gang members to "put in work" for the
 5 gang by committing crimes. (RT 1332-1333, 1345.) The gang expert
 6 testified that Petitioner, Chung, and Lay were "youngsters" of
 7 HKB. (RT 1332, 1358, 1363.)

8 9). In his rebuttal argument to the jury, the prosecutor argued
 9 that Moon did not commit the shooting directly, but acknowledged that
 10 he may have ordered it. (RT 2152.)

11 10). Petitioner was prejudiced by the trial court's failure to instruct
 12 the jury on this matter because the prosecution's entire case against
 13 him rested on Moon and Lay. Had the jury been correctly instructed
 14 on the law pertaining to accomplice testimony as to both Moon and Lay,
 15 the jury would not have been able to corroborate their testimonies with
 16 with each others. Since there were no other evidence presented at
 17 trial by the prosecution to corroborate the pretrial statements and
 18 testimonies of Moon and Lay, proof beyond a reasonable doubt could
 19 not have been found. The error is structural, requiring reversal
 20 per se, and if not structural, the error is subject to harmless error
 21 analysis under *Chapman v. California*.

22 Supporting Cases and Authorities

- 24 1). *Cool v. United States* (1972) 409 U.S. 100, 104.
- 25 2). *Sullivan v. Louisiana* (1993) 508 U.S. 281-282.
- 26 3). *Carella v. California* (1983) 491 U.S. 263.
- 27 4). *Hicks v. Oklahoma* (1980) 447 U.S. 343, 346.

- 5). *Chapman v. California* (1967) 386 U.S. 23
- 6). *McMillan v. Pennsylvania* (1986) 477 U.S. 79, 85
- 7). *Neder v. United States* (1999) 527 U.S. 1
- 8). Penal Code sections 1111 & 31.
- 9). CALCRIM 334
- 10). *People v. McLain* (1988) 46 Cal.3d 97, 106.
- 11). *People v. Cook* (1998) 61 Cal. App. 4th 1364, 1369.
- 12). *People v. Jones* (1964) 2 Cal. App. 2d 74, 94.

Ground Three

Petitioner was denied his Fourteenth Amendment right to due process and a fair trial because there was insufficient evidence to prove the gang enhancement beyond a reasonable doubt.

Supporting Facts

1). To prove the "primary activities" element of criminal street gang enhancement (PC § 186.22, subd. (b)(1)), the prosecution relied specifically on its gang expert's testimony that HKB's primary activities included assault and kidnapping. The prosecutor argued this point to the jury in his closing argument (RT 1899-1900.), and the trial court instructed the jury that the criminal street gang allegation required proof, among other things, that the group had "as one or more of its primary activities the commission of assault or kidnapping." (RT 1880; CT 808.) The trial court also instructed the jury that it could consider the charged crimes as one of the group's primary act-

1 ivities. (RT 1881; CT 808.) The evidence is legally insufficient to
 2 prove the "primary activities" element of the criminal street gang en-
 3 hancement, and therefore the enhancement must be stricken.

4 2). To prove the "primary activities" element of the gang enhance-
 5 ment, the prosecutor asked the gang expert one direct question about
 6 the issue and elicited one direct response:

7 Q Through your experience and in your conversations
 8 with other law enforcement, in your opinion, what
 9 are HKB's primary activities?

10 A I'm aware of the ones I've been involved with which is
 11 kidnapping, and assault with a deadly weapon,
 12 and possession of marijuana, and possession of
 13 marijuana for sales. I've also done some investig-
 14 ation of Hangoon Boys as far as other crimes they
 15 have committed over the last six or seven years.

16 (RT 1320)

17 3). The gang expert did not explain this testimony except to say that
 18 he had had "direct contact" with about seven admitted HKB gang mem-
 19 bers and two HKB associates, and the "five in 2001 were my part-
 20 ner's case, it was kidnapping and assault with a deadly weapon and
 21 four of my own during a traffic stop with an arrest for possession
 22 of marijuana and marijuana for sales." (RT 1319.)

23 4). To prove the predicate act element of the gang enhancement,
 24 the prosecutor introduced a certified minute order showing that John
 25 An, an admitted HKB gang member, was convicted for committing
 26 misdemeanor assault on March 4, 2005. (RT 1321-1322; Supp. CT
 27 2-3.)

28 5). In a subsequent discussion between the trial court and coun-
 sel, all agreed that the gang expert relied upon arrests, not convic-
 tions, to support his opinion on the gang's primary activities. The
 prosecutor acknowledged the point by stating, "As it relates to prim-

ary activities, Nanquil (gang expert) just listed assault and kidnapping. He didn't get into convictions. The conviction part was pattern of gang criminal conduct, separate elements." (RT 1883.) Petitioner's counsel added, "what Nanquil said was that he knew a fellow officer who stopped a vehicle with four individuals who were arrested for assault and kidnapping; so it was based on that conduct. There is no indication they were ever charged, prosecuted, or convicted of that crime." (RT 1883.) Petitioner's counsel went on to state that "there is no evidence that anybody from HKB was ever convicted of kidnapping, only that a vehicle was stopped where people were suspected of it. That's what the evidence is." (RT 1883.) The trial court replied, "I don't disagree that's what the evidence is." (RT 1883-1884.)

Supporting Cases and Authorities

- 1). Jackson v. Virginia. (1979) 443 U.S. 307, 319.
- 2). Apprendi v. New Jersey (2000) 530 U.S. 466, 490.
- 3). Burks v. United States (1978) 437 U.S. 1, 11.
- 4). Penal Code section 186.22, subd. (b)(1).
- 5). People v. Sengpadychith (2001) 26 Cal. 4th 316, 323
- 6). People v. Gardeley (1996) 14 Cal. 4th 605, 609-610.
- 7). In re Leland D. (1990) 223 Cal. App. 3d 251, 258.

Ground Four

Petitioner was denied his Fourteenth Amendment right to due process and a fair trial when the

prosecutor deliberately elicited false testimony from the chief investigating detective in the case during Petitioner's trial.

Supporting Facts

1). On December 8, 2006, Detectives Lowe and Peyton interrogated 16 year old Linora Lay. (RT 961.)

2). During this interrogation, Lay initially identified a single photograph of Petitioner as the driver of the suspect car during the freeway shooting. (RT 1275; Exh - I, pg. 11.) But near the end of this interrogation, Lay clarified his earlier identification of Petitioner as the driver and stated that he was actually not sure:

Lay: I remember getting in a black car too...

Lowe: Okay. That was during the chase? Or was that before the chase? Be sure of. You were in the white car when they passed, and they did the shooting on, on the car right? The guy that shot was Silent. And the guy that was driving was Daniel (Petitioner), right? Those are the things you are sure of?

Lay: I'm not sure.

Lowe: What do you mean you're not sure?

Lay: I think, I think it could have been one of the big homeys in the car too.

Lowe: There might have been four guys in the car?

Lay: Driving, or...

Lowe: The white car or black car?

Lay: The white car.

Lowe: Okay. So it wasn't Daniel driving?

Lay: I'm not, I'm not sure. I can't remember.

(Exh - I, pg. 36.)

3). Lay later testified at Petitioner's trial that during his interrogation, Detective Lowe suggested to him who the driver was by showing him a single photograph of Petitioner. (RT 1239, 1247.) He further testified that he felt threatened with being charged with something very serious if he didn't make a statement (RT 1267.), and acted in his best inter-

est by accepting those suggestions and repeating them to the detectives because he preferred to be a witness rather than a suspect. (RT 1231, 1259.)

4) While conducting direct examination of Detective Lowe during trial, the prosecutor asked him if he had any problems recording the interrogation of Lay. Detective Lowe replied that he had, and explained that a "pause button" on the tape recorder had been accidentally pushed during the interrogation which caused the tape to "pause" at times and not pick up everything that was said in the interrogation. (RT 1273-1274, 1276.)

5). The prosecutor then asked Detective Lowe a series of questions about what was said during the portions of the tape where information was missing due to the "pause button" (RT 1275-1278.), which he ultimately used to lead up to this question, eliciting the false testimony from Detective Lowe:

Prosecutor: Do you recall what he (Lay) was saying that made you respond the way you did on line 915?

Lowe: Yes. I believe -- I can't remember now, but I believe, "you're going to take care of Daniel." What it was is he was saying that he was afraid of Daniel Ryoo, and he was afraid to identify him.

(RT 1278.)

6). There is substantial evidence that shows this testimony elicited from Detective Lowe is false:

a). This alleged statement Lay made (unless otherwise stated, the "alleged statement" will be referred to the statement Detective Lowe testified that Lay made regarding his fear of Petitioner.) was never mentioned or disclosed to the Petitioner before trial.

b). The interrogation of Lay was tape recorded and transcribed, and nowhere on the tape or transcript contains this alleged sta-

1 tement. (Exh-I.)

2 c). Detectives Lowe and Peyton both took handwritten notes
3 during this interrogation, however none of those notes mention anything
4 about this alleged statement. (RT 1309.)

5 d). Detective Lowe wrote a report regarding this interroga-
6 tion after listening to the tape recording of it, but in spite of know-
7 ing that Lay's alleged statement did not make it on the tape recording,
8 he never mentioned it in his report. (RT 1308-1309.)

9 e). Detective Peyton testified at Petitioner's preliminary
10 hearing. Although moments before he testified, he witnessed Lay get
11 on the witness stand and recant all the statements he made during the
12 interrogation and also tell the court that he basically participated in
13 the interrogation because he felt threatened by the detectives, Detec-
14 tive Peyton never mentioned anything about Lay's alleged statement of
15 his fear to identify Petitioner. (Preliminary Hearing Transcript, pgs.
16 84, 86-98.)

17 f). Lay testified at Petitioner's trial that he was not afraid
18 of Petitioner. (RT 1266-1267.)

19 7). Petitioner further asserts that the prosecutor violated mandatory
20 discovery rules by failing to disclose this alleged statement of Lay bef-
21 ore trial, and the trial court's failure to sustain Petitioner's trial
22 counsel's objection to Lowe's testimony regarding this alleged statement
23 was error. (RT 1278-1279.) The inclusion of this prejudicial testimony
24 into Petitioner's trial violated his Fourteenth Amendment right to due
25 process and a fair trial.

26 8). Petitioner was severely prejudiced from Lowe's false testimony
27 for the following reasons:

a). The tape recording of Lay's interrogation was the key evidence the prosecution relied upon to connect Petitioner to the crime. At trial, Lay recanted his previous statement to the detectives and this tape recording was played to the jury to impeach his credibility. (RT 953-954, 956, 960-961, 1272, 2123-2133.)

b). In his closing argument to the jury, the prosecutor emphasized that the only reason Lay told the detectives that he was not sure if Petitioner was the driver of the suspect car at the end of the interrogation, was because he was scared of Petitioner, and scared to "snitch" on him. (RT 1916.)

9). Petitioner's appellate attorney was ineffective by failing to raise this issue on his appeal.

Supporting Cases and Authorities

- 1). *Napue v. Illinois* (1959) 360 U.S. 264, 269.
- 2). *Mooney v. Holohan* (1935) 294 U.S. 103, 112.
- 3). *United States v. Wallach* (2d. Cir. 1991) 935 F.2d. 445, 456.
- 4). *Alcorta v. Texas* (1957) 355 U.S. 28
- 5). *Blumberg v. Garcia* (C.D. Cal. 2010) 687 F.Supp.2d 1074.
- 6). *Smith v. Robbins* (2000) 528 U.S. 259.

Prayer for Relief

Petitioner is without remedy save by the Great Writ of Habeas Corpus.

WHEREFORE, Petitioner prays that this honorable court:

- 1). Issue an Order to Show Cause;

18.

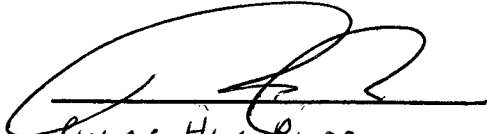
- 2). Declare the rights of the parties;
- 3). Appoint counsel for Petitioner;
- 4). Issue a Writ of Habeas Corpus vacating the judgement of conviction with instructions to grant Petitioner a new trial;
- 5). Grant any other further relief the court deems proper.

Verification

I, Pyung Hwa Ryoo, hereby state:

I am the Petitioner in this action. I have read the foregoing Petition for Writ of Habeas Corpus, and the facts stated therein are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed at CSP - Corcoran, on ~~2012~~ 7/23/12.


Pyung Hwa Ryoo

In Propria Persona.

8. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: N/A

9. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?
☐ Yes ☒ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

- a. (1) Name of court: _____
 (2) Case number: _____
 (3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____
 (4) Grounds raised *(list each)*:
 (a) _____
 (b) _____
 (c) _____
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: _____
 (6) Result _____
 (7) Was an evidentiary hearing held? ☐ Yes ☐ No

- b. (1) Name of court: _____
 (2) Case number: _____
 (3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____
 (4) Grounds raised *(list each)*:
 (a) _____
 (b) _____
 (c) _____
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: _____
 (6) Result _____

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

10. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? ☐ Yes ☒ No

If so, give the following information (and attach a copy of the petition if available):

(1) Name of court: _____

(2) Case number: _____

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

11. Are you presently represented by counsel? ☐ Yes ☒ No


If so, provide name, address and telephone number: _____

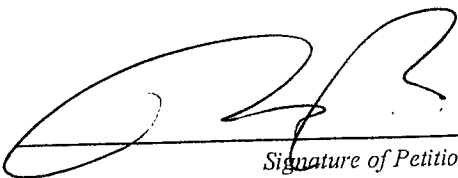
WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding,

Signature of Attorney (if any)

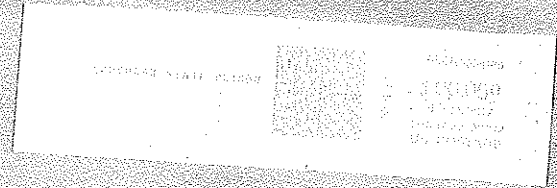
I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on

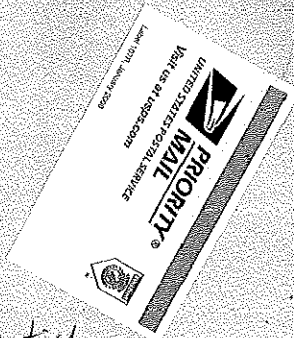
7/27/12

Date


Signature of Petitioner

Corcoran State Prison
P.O. Box 8800,
Corcoran, CA 93212



2254



Clerk of the United States District Court
for the Central District of California
United States Courthouse
ATTN: Intake / Docket Section
312 North Spring Street
Los Angeles, CA 90012.

Confidential
* Legal Mail

SMW

7/24/12



TERRY NAFISI
District Court Executive
and Clerk of Court

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**
312 North Spring Street, Room G-8 Los
Angeles, CA 90012
Tel: (213) 894-3535

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4570

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

Friday, July 27, 2012

**PYUNG HWA RYOO F88924
CORCORAN STATE PRISON
P.O. BOX 8800
CORCORAN, CA 93212**

Dear Sir/Madam:

Your petition has been filed and assigned civil case number CV12- 6440 AG (MRW)

Upon the submission of your petition, it was noted that the following discrepancies exist:

- ☒ 1. You did not pay the appropriate filing fee of \$5.00. Submit a cashier's check, certified bank check, business or corporate check, government issued check, or money order drawn on a major American bank or the United States Postal Service payable to 'Clerk U.S. District Court'. If you are unable to pay the entire filing fee at this time, you must sign and complete this court's Prisoner's Declaration In Support of Request to Proceed In Forma Pauperis in its entirety. The Clerk's Office will also accept credit cards (Mastercard, Visa, Discover, American Express) for filing fees and miscellaneous fees. Credit card payments may be made at all payment windows where receipts are issued.
- ☒ 2. The Declaration in Support of Request to Proceed in Forma Pauperis is insufficient because:
 - ☐ (a) You did not sign your Declaration in Support of Request to Proceed in Forma Pauperis.
 - ☐ (b) Your Declaration in Support of Request to Proceed in Forma Pauperis was not completed in its entirety.
 - ☒ (c) You did not submit a Certificate of Prisoner's Funds completed and signed by an authorized officer at the prison.
 - ☐ (d) You did not use the correct form. You must submit this court's current Declaration in Support of Request to Proceed in Forma Pauperis.
 - ☐ (e) Other: _____

Enclosed you will find this court's current Prisoner's Declaration in Support of Request to Proceed in Forma Pauperis, which includes a Certificate of Funds in Prisoner's Account Form.

Sincerely,
Clerk, U.S. District Court
SBOURGEO

By: _____
Deputy Clerk



TERRY NAFISI

District Court Executive
and Clerk of Court

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**
312 North Spring Street, Room G-8 Los
Angeles, CA 90012
Tel: (213) 894-7984

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4570

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

Friday, July 27, 2012

**PYUNG HWA RYOO F88924
CORCORAN STATE PRISON
P.O. BOX 8800
CORCORAN, CA 93212**

Dear Sir/Madam:

- A ☒ Petition for Writ of Habeas Corpus was filed today on your behalf and assigned civil case number CV12- 6440 AG (MRW)
- A ☐ Motion pursuant to Title 28, United States Code, Section 2255, was filed today in criminal case number _____ and also assigned the civil case number _____
- A ☐ Motion for Extension of Time to File Habeas Corpus Petition was filed today on your behalf and assigned civil case number _____

Please refer to these case numbers in all future communications.

Please Address all correspondence to the attention of the Courtroom Deputy for:

- ☐ District Court Judge _____
- ☒ Magistrate Judge Michael Wilner

at the following address:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> U.S. District Court
312 N. Spring Street
Civil Section, Room G-8
Los Angeles, CA 90012 | <input type="checkbox"/> Ronald Reagan Federal
Building and U.S. Courthouse
411 West Fourth St., Suite 1053
Santa Ana, CA 92701-4516 | <input type="checkbox"/> U.S. District Court
3470 Twelfth Street
Room 134
Riverside, CA 92501 |
|---|---|--|

The Court must be notified within fifteen (15) days of any address change. If mail directed to your address of record is returned undelivered by the Post Office, and if the Court and opposing counsel are not notified in writing within fifteen (15) days thereafter of your current address, the Court may dismiss the case with or without prejudice for want of prosecution.

Very truly yours,
Clerk, U.S. District Court

By: SBOURGEO
Deputy Clerk